

ESTTA Tracking number: **ESTTA308875**

Filing date: **09/30/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91190169
Party	Plaintiff SUSINO UMBRELLA CO., LTD.
Correspondence Address	Scott Q Vidas Vidas, Arrett & Steinkraus, P.A. 6640 Shady Oak Rd., Suite 400 Eden Prairie, MN 55344-7834 UNITED STATES svidas@vaslaw.com
Submission	Opposition/Response to Motion
Filer's Name	Scott Q. Vidas
Filer's e-mail	svidas@vaslaw.com
Signature	/Scott Q. Vidas/
Date	09/30/2009
Attachments	14527US01_Reply_to_Motion to strike 20090930.pdf (5 pages)(88665 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of App. Ser. No. 77/355,544)	
)	
SUSINO UMBRELLA CO., LTD.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91190169
)	
SUSINO USA LLC,)	
)	
Applicant.)	

OPPOSER’S RESPONSE TO APPLICANT’S MOTION TO STRIKE

Opposer, Susino Umbrella Co., Ltd., ("Susino Umbrella"), by its undersigned attorney, hereby answers and opposes Applicant’s Motion to Strike pursuant to Rule 12(f)(2) and requests that it be denied as follows:

1. Applicant asserts in the motion that all or part of Opposer’s Corrected Response to Applicant’s Motion to Dismiss should be stricken pursuant to Rule 12(f)(2) of the Federal Rules of Civil Procedure. Applicant specifically moves to strike the exhibits attached to the Corrected Response to Applicant’s Motion to Dismiss and alleged hearsay evidence in the same.
2. Rule 12(f)(2) permits a court to strike from a pleading “an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Motions to strike are generally not favored by the Board and, unless it is clear that the matter sought to be stricken by the motion is immaterial, and can have no bearing on the issues in the

case, the motion is likely to be denied. *Leon Shaffer Golnick Advertising, Inc. v. William G. Pendill Marketing Co, Inc.*, 177 U.S.P.Q. 401, 1973 WL 20092 (T.T.A.B. 1973).

Exhibits Attached to Corrected Response to Applicant's Motion to Dismiss

3. As stated in Trademark Trial and Appeal Board Practice and Procedure, it is well settled that exhibits attached to a pleading are not considered evidence in the proceeding unless they are properly identified and introduced into evidence during the period for testimony. GARY D. KRUGMAN, TRADEMARK TRIAL AND APPEAL BOARD PRACTICE AND PROCEDURE § 3:49 (2009-2010 ed. 2009). The Board consistently refuses to strike any exhibit attached to the pleadings on the ground that the exhibits help apprise the defendant of the nature of the plaintiff's case. *Id.*

4. The exhibits attached to Opposer's Corrected Response were not meant to be authoritative but to help provide a basis for its change of name and the mistranslation that occurred. Furthermore, the exhibits are clearly not immaterial as they provide support that Opposer has priority in the mark and that a mistranslation occurred.

5. In supporting its motion to strike, Applicant cites in paragraph 6 of its motion to strike "Rule 44(2)(a)(ii) Proving an Official Record of Foreign Origin" [which should correctly be cited as FED. R. CIV. P. 44(a)(2)(A)(ii)]. Rule 44 can be found under Title VI: Trials.

6. Considering that this is only the pre-trial stage and Rule 44 falls under Title VI: Trials of the F.R.C.P., Rule 44 was meant to be applied during Trial and would not be applicable at this stage of the proceedings. Additionally and as stated in paragraph

3 above, the exhibits are not to be considered evidence and are merely included to help apprise the defendant of the nature of the Opposer's case.

7. For the reasons stated above, Applicant's prayer that the exhibits be stricken from Opposers' pleadings should be denied. The Board rarely strikes exhibits attached to pleadings, and in such rare cases, does so only if the exhibits are immaterial, which they are not here.

Alleged Hearsay Evidence of Translations

8. In paragraphs 8 and 9 of Applicant's motion to strike, Applicant claims that Opposer is in violation of Rule 33(2)(a)(ii) by proffering hearsay evidence to support its alleged claims in its Notice of Opposition. Notwithstanding that Applicant incorrectly cites Rule 33, that Rule is inapposite here. Rule 33 is captioned as Interrogatories to Parties, and no interrogatories have been served on any party as of yet. Furthermore, the hearsay evidence rules are not applicable to the attached exhibits because they were not intended to be admitted as evidence.

Conclusion

The Board should deny the Applicant's motion to strike. In responding to the Applicant's motion to dismiss, Opposer attached exhibits and cited support as a basis for its well-pleaded allegations in its opposition. The exhibits were not intended to serve as admitted evidence nor have they been designated as so. Because they provided support for their allegations and were not redundant, immaterial, impertinent, or scandalous matter, they should not be stricken.

WHEREFORE, Susino Umbrella prays that the Board dismiss Applicant's
Motion to Strike.

Respectfully submitted,
SUSINO UMBRELLA CO., LTD.

By: /s/ /Scott Q. Vidas/
One of its Attorneys

Dated: September 30, 2009

Scott Q. Vidas
VIDAS, ARRETT & STEINKRAUS, P.A.
6640 Shady Oak Drive
Suite 400
Eden Prairie, Minnesota 55344-7834
Tel. No. 952-563-3000
Facsimile No. 952-563-3001
svidas@vaslaw.com

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing
OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO STRIKE to be served
upon:

SUSINO USA, LLC
P.O. Box 1013
Loxahatchee, Florida 33470-1013

by placing same in an envelope, properly sealed and addressed, with postage prepaid and
depositing same with the United States Postal Service on this 30th day of September,
2009.

/s/ /Scott Q. Vidas/
Scott Q. Vidas

Filed with the TTAB via
ESSTA on September 30, 2009